



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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June 12, 2012

Dwayne Frost
DOC 922891
5501 S. 1100 West
Westville, Indiana 46391

Re: Formal Complaint 12-FC-143; Alleged Violation of the Access to Public Records Act by the Clerk of the Johnson County Superior Court

Dear Mr. Frost:

This advisory opinion is in response to your formal complaint alleging the Clerk of the Johnson County Superior Court ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sue Anne Misiniec, Clerk of the Johnson County Circuit and Superior Courts, issued a written response to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Clerk on May 11, 2012. As of June 8, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Clerk.

In response to your formal complaint, Ms. Misiniec advised that the Clerk has no record of receiving your request for records.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Clerk is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Clerk's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The Clerk maintains that it did not receive a request from you. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not Clerk received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See I.C. § 5-14-3-9(b)*. A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See I.C. §5-14-3-9(c)*. If the Clerk received your request and did not respond to it within these timeframes, it acted contrary to the APRA. However, if the Clerk did not receive your request, it was not obligated to respond to it.

I trust that the Clerk will respond to your request in accordance with the APRA upon its receipt. If you want to ensure that your request reaches the Clerk in the future, you may consider sending the request via certified mail or making arrangements for your request to be hand-delivered.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage
Public Access Counselor

cc: Sue Anne Misiniec